

No. 15086

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United States  
Court of Appeals  
for the Ninth Circuit

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LEWIS H. SAPER, as Trustee in Bankruptcy of  
Riverside Iron & Steel Corporation,

Appellant,

vs.

THOMAS A. WOOD,

Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Southern District of California,  
Central Division.

FILED

JUN 19 1956



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States District Court for the Southern  
District of California, Central Division

No. 15259-T

LEWIS H. SAPER, as Trustee in Bankruptcy of  
the Estates of RIVERSIDE IRON AND  
STEEL CORPORATION and HARLAN H.  
BRADT, Bankrupts,

Plaintiffs,

vs.

THOMAS A. WOOD,

Defendant.

CLAIM UNDER BANKRUPTCY ACT

Plaintiff alleges:

1. Plaintiff, Lewis H. Saper, as Trustee in Bankruptcy of Riverside Iron and Steel Corporation, hereinafter referred to as "Riverside" and Harlan H. Bradt, hereinafter referred to as "Brandt," bankrupts, brings this action under Sections 60b and 67a of the Act of Congress relating to Bankruptcy.

2. On information and belief, that Riverside is a stock corporation duly organized and existing under the laws of the State of Nevada.

3. That said Riverside filed a voluntary petition in bankruptcy in the United States District Court for the Southern District of New York, on or about the 14th day of March, 1951, and such proceedings were thereafter had that it was duly adjudicated a bankrupt.

4. That on or about the 13th day of January, 1953, plaintiff was duly appointed Trustee in Bankruptcy of Riverside, thereafter duly qualified, and is still functioning as such Trustee. [2\*]

5. That the said Bradt filed a voluntary petition in bankruptcy in the United States District Court for the Southern District of New York, on or about the 10th day of July, 1951, and such proceedings were thereafter had that he was duly adjudicated a bankrupt.

6. That on or about the 31st day of July, 1951, plaintiff was duly appointed Trustee in Bankruptcy of Bradt, thereafter duly qualified, and is still functioning as such Trustee.

7. That by an order of the United States District Court for the Southern District of New York, dated December 17, 1952, upon notice to all of the creditors of said bankrupts, the said bankruptcy proceedings were duly consolidated.

8. On information and belief, that on or about the 20th day of November, 1950, Harold J. Ostly, as Clerk of the Superior Court of the State of California, Los Angeles County, and/or as County Clerk of Los Angeles County in said State of California, held a sum in excess of \$160,000 for Riverside and Bradt.

9. On information and belief, that on or about the 20th day of November, 1950, and within four months of the filing of the voluntary petition in Bankruptcy of Riverside, the defendant caused a

writ of execution to be served upon said Harold J. Ostly, either as County Clerk or as Clerk of the Superior Court, and purported thereby to obtain a lien upon said funds, and thereafter said Ostly on the 21st day of December, 1950, transferred certain of the said funds of the bankrupt Riverside to the defendant in satisfaction of an antecedent debt of the bankrupt Riverside.

10. On information and belief, that the said transfer on the said 21st day of December, 1950, was in the sum of \$5,839.49 in cash then held by the said County Clerk for said bankrupt Riverside.

11. That the effect of said transfer and purported lien was to enable the said defendant to obtain a greater percentage of his debt than any other creditors of said bankrupt or bankrupts in [3] the same class.

12. That at the time of the said purported lien and transfer, the said Riverside and Bradt were insolvent and on information and belief, that the defendant, or his agents acting with reference thereto, had knowledge or reasonable cause to believe that the said Riverside and Bradt were insolvent.

Wherefore, plaintiff demands:

- (a) That the said writ of execution be set aside;
- (b) That the said transfer be set aside;
- (c) That the plaintiff have judgment against the defendant for the sum of \$5,839.49, with interest; and

(d) That the plaintiff have judgment against the defendant for costs.

LOUIS M. BROWN, and  
ALEX DENNY FRED,  
Attorneys for Plaintiff.

By /s/ ALEX DENNY FRED.

[Endorsed]: Filed March 2, 1953. [4]

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[Title of District Court and Cause.]

### ANSWER

Comes now the defendant Thomas A. Wood and answering plaintiff's complaint admits, denies and alleges as follows, to wit:

#### I.

Answering paragraph 3 of plaintiff's complaint, defendant admits that on or about the 14th day of March, 1951, Riverside Iron and Steel Corporation, a corporation organized and existing under and by virtue of the laws of the State of Nevada, filed in the United States District Court for the Southern District of New York, a voluntary petition in bankruptcy, but said answering defendant denies that on the 14th day of March, 1951, or at any time or at all, that said Riverside Iron and Steel Corporation, a corporation, was or now is insolvent.

#### II.

Answering paragraph 8 of plaintiff's complaint, defendant denies generally and specifically each and

every allegation therein [5] contained except that the defendant admits that on or about the 20th day of November, 1950, Harold J. Ostly, as Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, held in his possession the sum of \$82,619.69, which said sum was payable to LeRoy B. Lorenz pursuant to an assignment duly and regularly made by the Riverside Iron and Steel Corporation, a corporation, and Harlan H. Bradt, assigning to the said LeRoy B. Lorenz all the proceeds payable to the said Riverside Iron and Steel Corporation, a corporation and Harlan H. Bradt payable by reason of the judgment entered in the Superior Court of the State of California, in and for the County of Los Angeles in an action styled E. T. Foley, plaintiff, vs. Riverside Iron and Steel Corporation, a corporation, Harlan H. Bradt et al., defendants, numbered 520858, and denies that on or about the 20th day of November, 1950, or at any time or at all subsequent to the assignment as above alleged, the said Riverside Iron and Steel Corporation, a corporation, or Harlan H. Bradt had any right, title or interest in or to any moneys held by Harold J. Ostly, as Clerk of the Superior Court of the State of California, in and for the County of Los Angeles pursuant to the deposit of moneys made in said action styled E. T. Foley, plaintiff, vs. Riverside Iron and Steel Corporation, Harlan H. Bradt et al., defendants.

### III.

Answering paragraph 9 of plaintiff's complaint, defendant denies that on or about the 20th day of



November, 1950, and within four months of the filing of the voluntary petition in bankruptcy of Riverside Iron and Steel Corporation, a corporation, defendant caused a writ of execution to be served upon the said Harold J. Ostly, either as County Clerk or as Clerk of the Superior Court, and that the said defendant purported thereby to obtain a lien upon said funds, and that the said Ostly thereafter, pursuant to a writ of execution issued on the 20th day of November, 1950, did [6] on the 21st day of December, 1950, transfer certain funds of the said Riverside Iron and Steel Corporation, a corporation, to the defendant in satisfaction of the antecedent debt of the said Riverside Iron and Steel Corporation, a corporation, and in that behalf plaintiff alleges that on or about the 13th day of December, 1946, in an action then pending in the Superior Court of the State of California, in and for the County of Los Angeles, styled Thomas A. Wood, plaintiff, vs. Riverside Iron and Steel Corporation, a corporation, defendant, and numbered 522,523, an attachment was issued and served upon E. T. Foley, the plaintiff in the above-mentioned action, attaching all moneys, credits or other properties of the Riverside Iron and Steel Corporation, a corporation, in the hands of the said E. T. Foley or in his possession or under his control; that on or about the 27th day of April, 1948, in the action entitled E. T. Foley, plaintiff, vs. Riverside Iron and Steel Corporation, a corporation, Harlan H. Bradt et al., defendants, numbered 520858, pending in the Superior Court of the State of California, in and for the County of Los Angeles,

the plaintiff, E. T. Foley and the defendants, Riverside Iron and Steel Corporation, a corporation and Harlan H. Bradt and their respective counsel of record entered into a stipulation which stipulation, among other things, set forth that there had been served upon the said E. T. Foley in the action styled Thomas A. Wood, plaintiff, vs. Riverside Iron and Steel Corporation, a corporation, an attachment in the amount of \$4,012.09 besides interest at the rate of 7% per annum from the 27th day of June, 1944, and costs of suit, and that said moneys in the hands of the said E. T. Foley belonging to the Riverside Iron and Steel Corporation, a corporation, were subject to said writ of attachment; that following the entering into of said stipulation, E. T. Foley deposited with the Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, for the account of Riverside [7] Iron and Steel Corporation, a corporation, subject to the liens of the writs of attachment then outstanding against said money, the sum of \$82,619.69; that the lien of the defendant in this action, Thomas A. Wood, attached to said fund on the 13th day of December, 1946.

#### IV.

Answering paragraph 10 of plaintiff's complaint, defendant denies that the said transfer on the 21st day of December, 1950, was of any funds held by the County Clerk on said date for Riverside Iron and Steel Corporation, a corporation, or Harlan H. Bradt.

## V.

Answering paragraph 11 of plaintiff's complaint, defendant denies that the effect of said transfer of funds by the County Clerk on or about the 21st day of December, 1950, to the Sheriff of Los Angeles County was to enable or did enable the defendant to obtain a greater percentage of his debt than any other creditors of said bankrupt or bankrupts in the same class.

## VI.

Answering paragraph 12 of plaintiff's complaint, the defendant denies that on or about the 20th day of November, 1950, or on or about the 21st day of November, 1950, the defendant Riverside Iron and Steel Corporation, a corporation, was insolvent or is now insolvent; denies that the defendant or any person or agent acting for and on behalf of said defendant had any knowledge or any reasonable cause to believe that the said Riverside Iron and Steel Corporation, a corporation, was insolvent on or about the 20th day of November, 1950 or on or about the 21st day of November, 1950, or that the said Riverside Iron and Steel Corporation, a corporation, is now insolvent. [8]

For a Further, Second and Separate Defense of Plaintiff's Complaint, Defendant Alleges:

## I.

That on or about the 13th day of December, 1946, said defendant filed an action in the Superior Court of the State of California, in and for the County of Los Angeles, styled Thomas A. Wood, plaintiff, vs.



Riverside Iron and Steel Corporation, a corporation, defendant, numbered 522523, and caused to be issued in said action a writ of attachment directed to E. T. Foley, which said writ of attachment was on said date by the Sheriff of the County of Los Angeles, State of California, served upon the said E. T. Foley attaching all moneys, credits or other properties of the Riverside Iron and Steel Corporation, a corporation, in the hands of the said E. T. Foley or in his possession or under his control; that thereafter and on or about the 16th day of December, 1946, the said E. T. Foley made return to the Sheriff of the County of Los Angeles, stating that at said time he was unable to state to what extent he had in his possession or under his control moneys, credits or properties belonging to Riverside Iron and Steel Corporation, a corporation.

## II.

That thereafter and on or about the 4th day of August, 1948, the said E. T. Foley made a supplemental answer to said attachment wherein the said E. T. Foley stated that pursuant to judgment entered in an action styled E. T. Foley, plaintiff, vs. Riverside Iron and Steel Corporation, a corporation, Harlan H. Bradt et al., defendants, numbered 520858 in the Superior Court of the State of California, in and for the County of Los Angeles, that the said E. T. Foley had deposited with the Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, for the use and benefit of Riverside Iron and Steel Corporation,

a corporation the sum of \$82,619.69 less [9] deductions for costs plus 1000 shares of the capital stock of Riverside Iron and Steel Corporation, a corporation, standing in the name of Harlan H. Bradt.

### III.

That on or about the 27th day of April, 1948, in said action styled Foley vs. Riverside Iron and Steel Corporation, Harlan H. Bradt, et al., the said E. T. Foley and the defendants Riverside Iron and Steel Corporation, a corporation and Harlan H. Bradt and their respective counsel of record entered into a stipulation which said stipulation was filed in said action and which stipulation, among other things, recited that the said E. T. Foley held said moneys in his possession subject to, among other things, writs of attachment. The writ of attachment issued out of the Superior Court of the State of California, in and for the County of Los Angeles, in case No. 522523 entitled Thomas A. Wood, plaintiff, vs. Riverside Iron and Steel Corporation, a corporation, defendant.

### IV.

That thereafter and on or about the 4th day of August, 1948, said money was deposited with Harold J. Ostly, Clerk of the Superior Court of the County of Los Angeles, State of California, as ex officio Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, subject to the lien created by the writ of attachment

issued in said action hereinbefore referred to and styled Thomas A. Wood, plaintiff, vs. Riverside Iron and Steel Corporation, a corporation.

#### V.

That on or about the 12th day of August, 1948, a writ of attachment was issued in said action, Thomas A. Wood, plaintiff, vs. Riverside Iron and Steel Corporation, a corporation, and served upon the County Clerk of the County of Los Angeles, State of California, as ex officio Clerk of the Superior Court of the [10] State of California, in and for the County of Los Angeles, attaching all of the right, title and interest of the said Riverside Iron and Steel Corporation, a corporation, in and to said sum of \$82,619.69, and the said Harold J. Ostly, County Clerk of the County of Los Angeles, State of California, as ex officio Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, duly and regularly made a return to the Sheriff of the County of Los Angeles, State of California, stating that the said Harold J. Ostly had in his possession property belonging to the Riverside Iron and Steel Corporation, a corporation, cash in the sum of \$82,619.69 subject to said writ of attachment.

#### VI.

That thereafter and after entry of judgment in said action of Wood vs. Riverside Iron and Steel Corporation, a corporation, in favor of the plaintiff, a writ of execution was duly and regularly served upon Harold J. Ostly, County Clerk of the County of Los Angeles, State of California, as ex officio Clerk of the Superior Court of the State of Cali-

fornia, in and for the County of Los Angeles, and the said Harold J. Ostly made return to the Sheriff of the County of Los Angeles, State of California, stating that he held in his possession the sum of \$82,619.69 which had been deposited with him for the account of the Riverside Iron and Steel Corporation, a corporation; that there had been served and filed with the said Harold J. Ostly, County Clerk of the County of Los Angeles, State of California, as ex officio Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, an assignment duly made and executed by Riverside Iron and Steel Corporation, a corporation, and Harlan H. Bradt assigning all of the right, title and interest of the said Riverside Iron and Steel Corporation, a corporation, and Harlan H. Bradt in and to the said sum of \$82,619.69 and in and to said [11] 1000 shares of the capital stock of the Riverside Iron and Steel Corporation, a corporation, and in and to any and all other moneys or proceeds that may come to the said Riverside Iron and Steel Corporation, a corporation, and Harlan H. Bradt by reason of said judgment in said action, and that the said Harold J. Ostly, as a result of said assignment, held said sum of \$82,619.69 for the use and benefit of Le Roy B. Lorenz.

## VII.

That thereafter and on or about the 29th day of November, 1950, a supplemental writ of execution was served upon the said Le Roy B. Lorenz.

## VIII.

That thereafter and on or about the 1st day of December, 1950, there was issued out of the Superior Court of the State of California, in and for the County of Los Angeles, in said action E. T. Foley, plaintiff, vs. Riverside Iron and Steel Corporation, a corporation, Harlan H. Bradt et al., defendants, an order to show cause, which said order to show cause ordered the said Harold J. Ostly, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles and Le Roy B. Lorenz, the assignee of the judgment in favor of Riverside Iron and Steel Corporation, a corporation and Harlan H. Bradt, to show cause before Department 34 of the Superior Court of the State of California, in and for the County of Los Angeles, on the 8th day of December, 1950, why an order should not be made in the above-entitled action directing Harold J. Ostly, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, to pay to the Sheriff of the County of Los Angeles in satisfaction of the judgment entered into in that certain action styled Thomas A. Wood vs. Riverside Iron and Steel Corporation, a corporation, and numbered 522523, the sum of \$4,012.98 with interest at the rate of 7% per [12] annum from the 27th day of June, 1944, plus \$18.00 costs in satisfaction of the above judgment and pursuant to the writs of attachment and executions heretofore served in said action of Wood



vs. Riverside Iron and Steel Corporation, a corporation; that said matter came on regularly for hearing before the Superior Court of the State of California, in and for the County of Los Angeles, on the 8th day of December, 1950, and that after hearing said matter an order was made in said Superior Court of the State of California, in and for the County of Los Angeles, directing the said Harold J. Ostly, County Clerk and Clerk of the Superior Court of the State of California, to pay over to Eugene W. Biscailuz, Sheriff of the County of Los Angeles, State of California, the sum of \$4,012.98 with interest at the rate of 7% per annum from the 27th day of June, 1944, plus \$18.00 costs in response to the writ of execution in that certain action styled Thomas A. Wood vs. Riverside Iron and Steel Corporation, a corporation, numbered 522523 and heretofore served on the said Harold J. Ostly, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

### IX.

That thereafter said order was duly and regularly served upon Harold J. Ostly, County Clerk and Clerk of the Superior Court of the State of California, and that said order is now a final order; that no appeal was taken therefrom and that said moneys were paid pursuant to the original lien that attached to said moneys on the 13th day of December, 1946, and the judgment subsequently entered in said action.

Wherefore, defendant prays that plaintiff take nothing by reason of his complaint; that the defendant have judgment for his costs herein expended and for all such other, further and different relief as may be just, equitable or proper in the [13] premises.

/s/ MICHAEL F. SHANNON,

/s/ THOMAS A. WOOD,

Attorneys for Defendant.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 15, 1953. [14]

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## STIPULATION OF FACT

[The Stipulation of Fact and Exhibits A, B, and C, filed April 22, 1954, are not printed here as they are reproduced within the Findings of Fact.

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[Title of District Court and Cause.]

## AMENDMENT TO STIPULATION OF FACT

It Is Stipulated by and between the attorneys for the plaintiff and the defendant in the above-entitled cause that the "Stipulation of Fact," dated April 13, 1954, shall be amended, as follows:

### I.

That paragraph XI of the "Stipulation of Fact" shall be amended to read as follows, beginning after the semicolon on line 21 of page 5:

That thereafter on the 5th day of July, 1949, the County Clerk made return to said writ reporting as follows:

“That we have the sum of \$329,263.46 on deposit in the above action, which amount is to be distributed to various litigants, among whom the Riverside Iron and Steel Corporation is one, according to the Judgment entered [33] 7/30/48, upon said Judgment becoming final.”

That the sheriff returned said Writ of Execution on August 25, 1949, reporting as follows:

“I, E. W. Biscailuz, Sheriff of the County of Los Angeles, State of California, do hereby certify that I returned the annexed Writ of Execution wholly unsatisfied, with further costs of \$1.75.

“E. W. BISCAILUZ,

“By F. E. MOONEY.”

That thereafter on the 21st day of November, 1950, a second Writ of Execution was served on the County Clerk, and the County Clerk replied on December 1, 1950, as follows:

“That we have the sum of \$82,219.08 on deposit, which amount is being held subject to further order of Court.”

It is understood that this Stipulation is not intended as admission of the truth of the conclusions or statements made by the Clerk or sheriff hereinabove quoted.



## II.

That a new paragraph, to be numbered paragraph XVII, shall be deemed added to the "Stipulation of Fact" at the end of paragraph XVI, as follows:

That the judgment in said action of E. T. Foley vs. Riverside Iron and Steel Corporation, et al., No. 520858, in the Superior Court of the State of California, in and for the County of Los Angeles, was signed and filed on July 28, 1948, and entered in Judgment Book 1945, page 210, on July 30, 1948. That said judgment was amended on September 24, 1948, and entered on October 6, 1948, in Judgment Book 1967, page 163. That thereafter, said Riverside Iron and Steel Corporation and Harlan H. Bradt appealed from said judgment. That said judgment [34] was affirmed by the District Court of Appeal of the State of California; that a petition for hearing in the Supreme Court was denied and a remittitur filed in the Superior Court of Los Angeles County on November 20, 1950.

Dated this 13th day of April, 1954.

LOUIS M. BROWN,

ALEX DENNY FRED,

By /s/ ALEX D. FRED,

Attorneys for Plaintiff.

/s/ THOMAS A. WOOD,

Attorney for Defendant.

[Endorsed]: Filed April 22, 1954. [35]

[Title of District Court and Cause.]

## MEMORANDUM OF DECISION

This case reflects the history of an 8-year effort by Wood, an attorney, to collect an attorney's fee earned by him.

A chronological chart is necessary to understand the case.

12/ 5/46—Wood sues Riverside Iron & Steel Corp., for an attorney's fee of \$4,012.90 with interest from 6/27/44.

12/ 5/46—Wood runs an attachment on Foley, who purportedly holds money belonging to Riverside.

12/16/46—Foley makes a return to the attachment or garnishment and says, in substance, that he cannot say what money is due Riverside until action No. 520858 is determined. (We will call this the Foley action.) [36]

7/28/48—Judgment is signed in the Foley case and under the judgment there is money due Riverside.

7/30/48—Judgment entered in Foley case.

7/28/48—(Dated between 7/28/48 and 8/1/48.)—A stipulation is entered into between Foley and Riverside, reciting various attachments or garnishments run against Foley attaching money due Riverside.

The Wood attachment of 12/5/46 is listed. The stipulation (1) lists these attachments, (2) recites that Foley made a return to each of them and sets up as Exhibits the copies of the returns, (3) states that the stipulation will not be an admission by Riverside that any money is due from Riverside, (4) and the stipulation contains an order, "It is so ordered, Wm. J. Palmer, Judge." [Our interpretation of the stipulation is as follows: Foley had been ordered by the judgment of 7/28/48 to pay \$329,000 into court and the judgment stated that some \$80,000 of the amount be paid to Riverside. Foley proposed to comply with the judgment but he knew, and was concerned with the garnishments run against him. He was faced with conflict between the court process of garnishment or attachment and the judgment of the court in the Foley action.

[Foley therefore secured a stipulation (it is on the legal paper of his attorneys) that the money he was depositing was subject to these attachment liens. The only reason or purpose of the judge signing the order at the end of the stipulation was, to in substance, say—[37] "Go ahead and deposit the money. We all know of the garnishments. You deposit the money subject to the liens created by the garnishments."]

8/ 1/48—Foley deposited the \$329,000 with the clerk in the Foley action.

8/ 4/48—Foley makes a supplemental return to the Wood attachment of 12/5/46 (and demand for return served on him on 12/13/46) supplementing his return of 12/16/46, and now reciting the judgment in the Foley case, his deposit of \$329,000 with the clerk and calling attention to the fact that Riverside is to get some \$80,000, under the judgment.

8/12/48—Wood has garnishment run on the county clerk who holds the \$329,000. (This garnishment, if valid, would run for 3 years to 8/12/51) §542(b) C.C.P.

9/24/48—Amended judgment signed in Foley case.

10/ 6/48—Amended judgment entered in Foley case. Par. 9 of the amended judgment states, "The court recognizes the possibility that one or more writs of attachment and one or more writs of execution may be served upon the Clerk, which ultimately and lawfully may require him to pay over to an enforcement officer part or all of the funds hereinabove ordered to be paid severally to one or more named distributees. It is not this court's intention to enjoin the clerk from the performance of such duty, and should he \* \* \* pay over \* \* \* any portion of the fund otherwise payable hereunder to

a certain distributee \* \* \* sums so paid over shall be deemed \* \* \* to have been paid by the clerk to said distributee [38] and shall be charged against and deducted from the full sum otherwise payable hereunder to said distributee \* \* \*"

[We find this judgment to be further confirmation of our view of the prior stipulation. The court in substance says that those prior attachment liens may require the clerk to pay the claims and if that happens, deduct amounts so paid from Riverside's share of the judgment.

Probably even more important, the judgment exempts the money in the hands of the clerk from the protective rule of "custodia legis."]

4/ 8/49—Wood reduces his claim to judgment.

6/27/49—Wood runs an execution on the clerk holding the \$329,000. [The lien from this execution, if valid, would expire 6/28/50, §688 C.C.P.]

7/ 5/49—Clerk makes a return and admits holding \$329,000 for various litigants.

11/20/49—The Foley case (having been appealed) remittitur comes down.

11/21/50—Wood runs a second writ of execution on the clerk.

12/ 1/50—Wood goes into Foley case and gets an order to show cause why his judgment should not be paid.

12/ 8/50—Order granted that Wood's judgment be paid.



1/ 3/51—Wood finally receives his money, \$5,800.07, which amount the plaintiff trustee herein, seeks to recover from him.

3/14/51—Riverside declared a bankrupt. [39]

This case has been tried partially on the issues of whether Wood had a lien on the money. If the decision is in the affirmative, this disposes of the case. If not, then other issues as to the insolvency of Riverside, etc., will have to be tried.

We conclude there was not a transfer, within the terms of the bankruptcy act, within four months prior to bankruptcy and that Wood received his money by virtue of a prior lien thereon.

We perceive several (and there may be more theories on which Wood is entitled to prevail.

(1) The court ordered Foley in the Foley case to deposit money on which Wood had run a garnishment. The court signed the stipulation between Foley and Riverside. In substance, the money went into court subject to Wood's claim or lien.

The garnishment had been served on Foley on 12/5/46. It ran until 12/5/49. §542(b) C.C.P. After the money passed from Foley to the clerk, Wood ran a garnishment on the clerk on 8/12/48. The new lien would not expire until 8/12/51. The running of the garnishment on the clerk was proper in view of the previous approval by the court of the stipulation and the later amended judgment, clearly

showed the intent of the court not to consider the money in "custodio legis."

On 4/8/49 Wood reduced his claim to judgment, and on 11/21/50, within the three-year period after the 8/12/48 garnishment, ran an execution on the clerk and eventually received his money.

The court in the Foley case recognized that the money it ordered Foley to pay to the clerk was impressed with liens and made proper provision that the liens would not be lost. [40]

The trustee's citation and quotations from 4 Am. Jur. 795-796 shows that "the officer holding it" (the money) "is the mere hand of the court \* \* \* having no right to make any disposition of such money \* \* \* without the consent of his own court, express or implied."

(2) It seems unthinkable that Wood's lien on the money in the hands of Foley could be destroyed by the court's order that Foley pay the money into court. Even if the court had no right to provide for the continuance of the lien, or the exemption of the money from the doctrine of custodia legis," then the law should spell out a suspension of the running of the three-period from the date of garnishment while the money was in "custodia legis." This would be based on the cases (in other situations) cited by Wood.

(3) The money was eventually paid to Wood on an order to show cause in the Foley case directed to the clerk, and Lorenz the assignee of record of

the judgment for money to Riverside. No appeal was taken from that order. It appears that the trustee is making a collateral attach on that order or judgment.

Judgment shall be in favor of Wood. Wood to prepare, serve and file findings, conclusions of law and judgment, pursuant to the rules of the court.

Dated: June 30, 1954.

/s/ JAMES M. CARTER,  
U. S. District Judge.

[Endorsed]: Filed June 30, 1954. [41]

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[Title of District Court and Cause.]

MOTION FOR NEW TRIAL, OR IN THE AL-  
TERNATIVE, TO ALTER OR AMEND  
THE JUDGMENT HEREIN AND POINTS  
AND AUTHORITIES

Plaintiff herein respectfully moves the Court as follows:

(1) To grant a new trial herein, or in the alternative,

(2) To alter or amend the judgment entered herein on March 30, 1955.

The grounds for said motion are as follows:

1. Errors in law occurring at the trial, including among other things, the following errors:



(a) In holding and finding that the defendant did not receive a transfer of funds within four months prior to bankruptcy.

(b) In holding and finding that the funds referred to in Paragraph III of the Court's findings of fact were not held custodia legis.

(c) In holding and finding that the defendant received [42] any moneys pursuant to any garnishment or writ of execution issued or served prior to November 21, 1950.

(d) In holding and finding by implication that the writ of attachment referred to in Paragraph I of the conclusions of law remained a valid writ of attachment after three years from December 5, 1946.

(e) In holding and finding that the instant action constitutes a "collateral" attack upon the order directing the County Clerk to pay \$5,478.24 to the Sheriff of Los Angeles County, as set forth in Paragraph V of the conclusions of law.

(f) In holding and finding that the writ of attachment referred to in Paragraph VI of the conclusions of law was valid.

(g) In holding and finding that the writ of execution issued April 8, 1949, referred to in Paragraphs VII and VIII of the conclusions of law, was a valid writ.

(h) In holding and finding that the deposit in custodia legis, referred to in Paragraph IV of the

conclusions of law herein, "would have suspended the running of the period of limitations for which attachments then outstanding against said fund had yet to run."

(i) In holding and finding that the plaintiff is not entitle to recover anything by reason of his complaint.

2. Insufficiency of the evidence to justify the decision and judgment of the Court. In this connection, plaintiff states as follows:

(a) Plaintiff incorporates herein by reference Subparagraphs (a) through (i) inclusive of Paragraph 1 hereinabove.

(b) There is insufficient evidence to support the Court's finding that the Superior Court of the County of Los Angeles, either expressly or impliedly, provided that the moneys deposited to order of court in the case of *E. T. Foley v. Riverside [43] Iron & Steel Corp.*, were not to be held in custodia legis.

(c) There is insufficient evidence to support the finding that the above referred to deposit was made "subject to the liens of any attachments or executions then outstanding against said fund in the hands of *E. T. Foley*."

3. Newly discovered evidence material to the plaintiff herein which he could not with reasonable diligence have discovered and produced at the time of the trial.

The foregoing motion is made and based upon this notice, upon the affidavit of Alex D. Fred served herewith, and upon all the pleadings and papers on file herein.

Dated: April 11, 1955.

ALEX D. FRED, and  
LOUIS M. BROWN,

By /s/ ALEX D. FRED,  
Attorneys for Plaintiff. [44]

## POINTS AND AUTHORITIES

### I.

#### Incorporation Herein By Reference of Earlier Briefs

This matter was comprehensively briefed by counsel for both sides prior to the decision and judgment of this Court. The points discussed in the previously filed written briefs are material and pertinent on this motion for new trial. For this reason, the plaintiff will not again set forth all of the points and authorities upon which he relies in support of this motion. Rather, plaintiff respectfully requests that the Court refer to the written briefs already on file, and plaintiff incorporates the same herein by reference as though set forth at length.

### II.

The Evidence Does Not Support the Finding That  
the Funds Held By the Clerk Were Not In  
Custodia Legis

The Court in rendering judgment in behalf of the defendant in the instant matter, predicated its decision, in part, at least, on the theory that the moneys deposited by Foley, pursuant to order of Court in *Foley v. Riverside Iron and Steel Corp.*, were not in custodia legis until the termination of the appeal. Plaintiff submits that this finding is erroneous and not supported by the evidence, for the reasons stated in the earlier briefs of the plaintiff.

However, assuming, arguendo, such finding is correct, there is then no basis for the Court's failure to find that the writs of attachment and execution issued prior to November 21, 1950, had not run their statutory length and expired according to law.

*Jones v. Toland*,  
117 Cal. App. 481, 483.

*Puissegur v. Yarborough*,  
29 Cal. 2d 409. [45]

### III.

#### Plaintiff Is Not Collaterally Attacking the Superior Court Order Directing Payment To Defendant

One point not discussed in the earlier briefs, which should be mentioned herein, relates to the memorandum decision of this Court, implying that the plaintiff is now seeking to collaterally attack the December 8, 1950, Order of the Superior Court directing that the Clerk turn over sufficient funds to satisfy the Wood judgment to the Sheriff. Rather

than attacking the order, the plaintiff seeks to rely upon it. The facts show that the Sheriff received the money pursuant to the writ of execution issued on November 20, 1950. (The earlier writs had been returned unsatisfied.) Plaintiff does not contend that the Court's order was erroneous. In fact, the December 8, 1950, order, and the Sheriff's return thereon, show that Wood received the money pursuant to a writ of execution which was issued within the period of four months prior to the bankruptcy of the Riverside Iron and Steel Corporation. The question of the preference could not have been litigated in the Superior Court at the time the December 8, 1950, directing payment to Wood was made for the reason that Riverside was not then in bankruptcy.

The plaintiff submits that this Court in finding that the moneys were paid pursuant to the earlier writs, has failed to give proper weight to the December 8th order and the Sheriff's return pursuant thereto. (See Stipulation of Facts, Paragraphs XIII and XIV.) These conclusively show that the moneys were received pursuant to a writ issued, served and returned all within the four-month period prior to Riverside's bankruptcy.

Respectfully submitted,

ALEX D. FRED, and  
LOUIS M. BROWN,

By /s/ ALEX D. FRED. [46]



[Title of District Court and Cause.]

AFFIDAVIT OF ALEX D. FRED

State of California,  
County of Los Angeles—ss.

Alex D. Fred, being first duly sworn, deposes and says:

1. That he is one of the attorneys for the plaintiff herein and is familiar with and has knowledge of the facts of the instant case.

2. That he is the attorney who executed on behalf of the plaintiff, the Stipulation of Facts, which served as the basis of the Court's decision and judgment herein. That Paragraph VIII of said stipulation refers to a stipulation incorporated therein and hereinafter referred to as Exhibit "B," pertaining to certain writs of attachment, including one which the defendant herein caused to be issued. Said Paragraph VIII further provides [47] and said Exhibit "B" reflects that the stipulation was signed by William J. Palmer, Judge of the Superior Court of Los Angeles County, under the notation "It Is So Ordered." That said stipulation of facts was prepared by the attorney for defendant herein.

3. That after the filing of the memorandum decision herein by this Court, affiant was informed by counsel active in the trial and appeal of *Foley v. Riverside Iron and Steel Corporation*, that they could not recall that said Judge Palmer, or any other judge, had signed such stipulation.

4. That affiant thereafter examined the records and files of said action of *Foley v. Riverside Iron and Steel Corporation*, in the possession of the Clerk of the Superior Court of Los Angeles County, and said records and files do not reveal any stipulation signed by said judge or any other judge. Said records reveal that the original of the stipulation, referred to as Exhibit "B" in the statement of facts agreed upon by the parties hereto, was filed on or about April 27, 1948, but that the signature of the judge is not affixed thereto either under the clause "It Is So Ordered," or elsewhere in said stipulation.

5. That further after the filing of said memorandum decision, affiant discovered that the reporter's transcript of the proceedings on April 27, 1948, in the trial court, in the aforesaid case of *Foley v. Riverside Iron and Steel Corporation*, contained the following colloquy relating to the stipulation referred to as Exhibit "B," commencing on line 3, at page 3063, and continuing to line 13, page 3064:

"Mr. Darling: I find that Mr. Cosgrove has prepared a stipulation which refers to the cases about which I was about to address myself, and I think if Mr. Cosgrove will explain to the Court the purpose, because I merely wanted to get in the record in this case the pendency of those four actions, I believe. [48]

"The Court: Has the stipulation been signed?

“Mr. Hammaek: By all parties.

“Mr. Cosgrove: We have been served with garnishments, attachments in each of the cases, and we wish to have the record show that money that was due Mr. Bradt was under garnishment, and we prepared a stipulation not knowing that Mr. West and Mr. Long were interested in it, and discussed it with Mr. Hammaek and wrote up a stipulation in which we recited the title of the case, the cause and the amount claimed, and that we were served with a garnishment, and we have all signed the stipulation and would like to submit it for the signature of the Court, and then the record will disclose that those garnishments on those cases have been served.

“(Passing document to the Court.)

“The Court: I notice at the bottom of this stipulation there is a place for the Court to sign so as to make it unanimous, and it says ‘It is so ordered.’ But what is it I am ordering?

“Mr. Cosgrove: It is not necessary to sign it, your Honor. My secretary is in the habit of putting those things on there.

“The Court: There is really no occasion for me to sign it.

“Mr. Cosgrove: I would say not, your Honor.

“Mr. Darling: You will also note, your Honor, that the name of my firm was not typed on the stipulation.

“The Court: Well, I think you have a right to feel slighted, Mr. Darling.



“Mr. Darling: I told Mr. Cosgrove I considered it a personal affront.”

6. Based on the foregoing, affiant states that that portion of Paragraph VIII stating that said Exhibit “B” was signed by “William J. Palmer, Judge of the Superior Court,” is erroneous, and that in fact said Exhibit “B” was not signed by said judge or any other judge. [49]

7. Affiant further states that affiant, on behalf of the plaintiff, and counsel for the defendant herein stipulated that said Exhibit “B” was signed by the aforesaid judge under an inadvertent mistake of fact occasioned by the confusion resulting from the fact that said Exhibit “B” provided a place for the signature of said judge after the words “It is so ordered.” That affiant had no knowledge that the said Exhibit “B” was not signed by the aforesaid judge until some time after this Court rendered its memorandum decision herein.

Dated this 11th day of April, 1955.

/s/ ALEX D. FRED.

Subscribed and sworn to before me this 11th day of April, 1955.

[Seal]     /s/ ROBERT S. DUKERMAN,  
Notary Public in and for said  
County and State.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 11, 1955. [50]

[Title of District Court and Cause.]

MINUTES OF THE COURT

DEC. 19, 1955

Present: Hon. James M. Carter, District Judge.

Proceedings:

For hearing motion of plaintiff, filed April 11, 1955, for a new trial, or, in the alternative, to alter or amend the judgment.

Attorney Fred argues in support of the motion, and Attorney Wood argues in opposition.

It Is Ordered that motion for new trial is denied, and that the alternative motion to amend judgment is denied.

On the Court's own motion, It Is Ordered that findings of fact and conclusions of law and judgment are vacated, and that findings be amended, and that new findings of fact, conclusions of law, and judgment be presented by Jan. 20, 1956.

JOHN A. CHILDRESS,  
Clerk;

By L. B. FIGG,  
Deputy Clerk. [52]

In the United States District Court, Southern  
District of California, Central Division

No. 15259-C

LEWIS H. SAPER, as Trustee, etc.,  
Plaintiff,

vs.

THOMAS A. WOOD,  
Defendant.

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial on the 13th day of April, 1954, before the above-entitled court, the Honorable James M. Carter, Judge presiding, Louis M. Brown and Alexander Denny Fred, appearing as attorneys for the plaintiff, Lewis H. Saper, Trustee in Bankruptcy of the Estates of Riverside Iron and Steel Corporation, and Harlan H. Brandt. Thomas A. Wood, appeared in pro persona for the defendant Thomas A. Wood.

The attorneys for the plaintiff and the defendant submitted said cause upon agreed statement of fact.

(1.)

That said stipulation of fact was in words and figures as follows:

“It Is Stipulated by and between the attorneys for the plaintiff and the defendant in the above-entitled cause as follows: [53]

## “I.

“That Thomas A. Wood, on December 5, 1946, filed an action against the Riverside Iron and Steel Corporation for attorney’s fees in the sum of \$4,012.90 together with interest thereon at the rate of 7% per annum from the 27th day of June, 1944.

## “II.

“That in said action and on December 5, 1946, a writ of attachment issued out of the Superior Court of the State of California, in and for the County of Los Angeles, directed to E. T. Foley and that said writ of attachment was, by the Sheriff of Los Angeles County, on December 5, 1946 served upon the said E. T. Foley.

## “III.

“That on the 16th day of December, 1946, the said E. T. Foley made return on said attachment as follows: ‘That I am at this time unable to state whether or to what extent I have in my possession or under my control any credits or other personal property belonging to the above-named defendant, or whether or to what extent I am indebted to said defendant for the reasons more particularly stated in the complaint, as amended, and other pleadings in that certain action now pending in the above-entitled court entitled E. T. Foley, defendant, vs. Riverside Iron and Steel Corporation, et al., defendants, No. 520859, to which reference is hereby made for further particulars, and that I cannot so state until said action is finally determined.’

## “IV.

“That on January 20, 1947, the Riverside Iron and Steel Company filed its answer to the complaint on file in the Superior Court of the State of California, in and for the County of Los Angeles; that on February 10, 1948, the [54] defendant Thomas A. Wood in said action made a motion for a summary judgment, which motion was denied.

## “V.

“That on February 26, 1948, a motion was made to set said action for trial.

## “VI.

“That said action was set for trial in the Superior Court of the State of California, in and for the County of Los Angeles for January 3, 1949.

## “VII.

“That on August 4, 1948, the said E. T. Foley made a supplemental answer to the writ of attachment theretofore served upon him by the Sheriff of Los Angeles County; that a copy of said answer as so made is attached to this stipulation and marked Exhibit ‘A’: [that on August 12, 1948, attachment was made upon the County Clerk of the County of Los Angeles, State of California].

## “VIII.

“That on August 1, 1948, and after the signing of the findings and judgment in the action entitled E. T. Foley, plaintiff, vs. Riverside Iron and Steel Corporation, a corporation, the said E. T. Foley deposited with the Clerk of the Superior Court of the State of California, in and for the County of Los

Angeles, the sum of \$329,263.46; that prior to depositing said money with the Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, the said E. T. Foley, as plaintiff in said action, Riverside Iron and Steel Corporation, Harlan H. Bradt and defendants West and Long entered into a stipulation, which stipulation was signed individually by E. T. Foley, individually by Harlan H. Bradt, Riverside Iron and Steel Corporation by Harlan H. Bradt, by Hewitt S. [55] West, and it was also signed by Cosgrove, Clayton, Cramer & Diether by T. B. Cosgrove, attorneys for E. T. Foley, and by Hammack & Hammack, Kenneth McEwen by Dan S. Hammack, Jr., attorneys for Riverside Iron and Steel Corporation, by Guthrie, Darling & Shattuck by Hugh W. Darling, attorneys for West and Long, and was signed by William J. Palmer, Judge of the Superior Court, a copy of said stipulation being attached hereto and marked Exhibit 'B.'

#### "IX.

"That thereafter and in said action, E. T. Foley, vs. Riverside Iron and Steel Corporation, a corporation, findings and an amended judgment were entered. Paragraph 9 of the amended judgment provides:

"9. That the plaintiff, E. T. Foley, within ten days after the date of entry of this judgment, shall deposit with the Clerk of this Superior Court, the sum of \$329,263.46 for disbursement as herein provided.



“That upon the date when this judgment shall have become final in the Court in which this proceeding shall be finally decided, the Clerk of this Superior Court, forthwith and without further order of this Court, shall distribute and pay said sum of \$329,263.46 to the parties to this action now to be named, and in the several amounts as follows:

“To A. S. Vinnell and C. W. Dun-	
ton, the sum of .....	\$84,919.74
“To W. L. Long, the sum of .....	\$81,898.48
“To H. S. West, the sum of .....	\$76,898.48
“To E. T. Foley, the sum of .....	\$ 2,927.07
“To Riverside Iron and Steel Cor-	
poration and Harlan H. Bradt, the	
sum of .....	\$82,619.69

“less deductions for costs as hereinafter provided. [56]

“That execution shall not issue from the whole or any portion of this Judgment unless the plaintiff should fail to pay to the Clerk the funds herein required of him to be paid, or unless the Clerk should fail to disburse said funds as herein required.

“The court recognizes the possibility that one or more writs of attachment and one or more writs of execution may be served upon the Clerk, which ultimately and lawfully may require him to pay over to an enforcement officer part or all of the funds hereinabove ordered to be paid severally to one or more named distributees. It is not this Court’s intention to enjoin the Clerk from the performance

of any such duty, and should he, in performance of such a duty, pay over to an enforcement officer any portion of the fund otherwise payable hereunder to a certain distributee, any and all sums so paid over shall be deemed, for the purposes of the distribution herein ordered, to have been paid by the Clerk to said distributee and shall be charged against and deducted from the full sum otherwise payable hereunder to said distributee. This Court does not pretend to determine the validity of any claim or judgment upon which any writ of execution or attachment may issue.'

"X.

"That on January 13, 1949, the case of Wood vs. Riverside Iron and Steel Corporation, was continued to March 14, 1949, for trial.

"XI.

"That said action was tried and contested, and on April 8, [57] 1949, judgment was entered in said action in favor of the said Thomas A. Wood against Riverside Iron and Steel Corporation as prayed for in the complaint in said action; that thereafter and on the 28th day of June, 1949, a writ of execution was issued out of the Superior Court of the State of California, directed to the Sheriff and to be served upon the County Clerk.

"XII.

"That on the 1st day of December, 1950, there was issued out of the Superior Court of the State of California an order to show cause directed to the

County Clerk of the County of Los Angeles and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, and to LeRoy B. Lorenz, in Department 34 of the Superior Court of the State of California, in and for the County of Los Angeles on the 8th day of December, 1950, at 9:30 o'clock of that day why an order should not be made in the above-entitled action, being the action of E. T. Foley, plaintiff, vs. Riverside Iron and Steel Corporation, a corporation, No. 520858, directing Harold J. Ostly, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, to pay to the Sheriff of Los Angeles County in satisfaction of the judgment entered in that certain action styled Thomas A. Wood vs. Riverside Iron and Steel Corporation, a corporation, and numbered 522523, out of the funds now on deposit with said Clerk in the above-entitled action for the use and benefit of the Riverside Iron and Steel Corporation and Harlan H. Bradt the sum of \$4,012.98 with interest at the rate of 7% per annum from the 27th day of June, 1944, plus \$18.00 costs in satisfaction of the above judgment and pursuant to the writs of attachment and executions heretofore issued and served in said action of Wood vs. Riverside [58] Iron and Steel Corporation. A copy of said order to show cause is attached hereto and marked Exhibit 'C.'

“XIII.

“That said order to show cause came on in Department 34 of the Superior Court of the State of

California, in and for the County of Los Angeles, on the 8th day of December, 1950; that the Superior Court made its order:

“ ‘The above-entitled matter coming on for hearing on the 8th day of December, 1950, pursuant to order to show cause issued on the 1st day of December, 1950. Thomas A. Wood appearing for the moving party and Harold W. Kennedy, County Counsel, by John B. Anson, Deputy Counsel, appearing for Harold J. Ostly, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, LeRoy B. Lorenz, assignee of the judgment in favor of Riverside Iron and Steel Corporation and Harlan H. Bradt having been served with said order to show cause on the 1st day of December, 1950, and having defaulted, and the default of the said LeRoy B. Lorenz having been entered, the matter having been submitted to the court for decision on the affidavits and oral argument,

“ ‘Now, Therefore, Harold J. Ostly, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, is hereby ordered to pay over to Eugene W. Biscailuz, Sheriff of the County of Los Angeles, State of California, the sum of \$4,012.98, with interest at the rate of 7 per cent per annum from the 27th day of June, 1944, plus \$18.00 costs, in response to the writ of execution issued in that certain [59] action styled Thomas A. Wood vs. Riverside Iron and Steel Corporation, a corporation, numbered

522523 and heretofore served on the said Harold J. Ostly, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, by said Sheriff, and to pay said money out of the funds heretofore deposited in the above-entitled action by the plaintiff, E. T. Foley, pursuant to order of court, for the use and benefit of Riverside Iron and Steel Corporation, a corporation, and Harlan H. Bradt.'

"XIV.

"That pursuant to said order, the County Clerk delivered to Eugene W. Biscailuz, Sheriff of the County of Los Angeles, in satisfaction of the judgment in Wood vs. Riverside Iron and Steel Corporation, the sum of \$5,838.49; that the Sheriff deducted from said sum the sum of \$37.69 for his fees and expenses, and on January 3, 1951, remitted to the said Thomas A. Wood the sum of \$5,800.07 in partial satisfaction of said judgment; that the Sheriff thereafter filed his Sheriff's Collection Return in the case of Wood vs. Riverside Iron and Steel Corporation, as follows:

"'I hereby certify that under and by virtue of the within hereunto annexed writ by me received on the 20th day of November, 1950, I did, on the 21st day of December, 1950, collect from Harold J. Ostly, County Clerk of Los Angeles County (remitted to Sheriff in Superior Court Case 520-858—Foley v. Riverside Iron and Steel Cpn.—with Court Order directing application in Case 522-523) the sum of \$5,848.49, and I deducted from the said sum of



\$5,838.49 my fees, commissions and expenses in the sum of \$37.69, leaving a net balance of [60] \$5,800.07 which has been paid to the attorney for creditor by County Warrant, in partial satisfaction.'

"XV.

"That on the 14th day of March, 1951, the Riverside Iron and Steel Corporation filed a voluntary petition in bankruptcy in the United States District Court for the Southern District of New York and thereafter was adjudicated a bankrupt.

"XVI.

"On July 6, 1949, and after Harold J. Ostly, County Clerk, had made his return, the Sheriff of Los Angeles County made demand upon the said Harold J. Ostly for the payment owing to said Sheriff out of the moneys then on deposit with said County Clerk to the credit of Riverside Iron and Steel Corporation, a corporation, demanding the sum of \$5,478.24; that the Sheriff of Los Angeles County, on November 21, 1950, after return having been made by Harold J. Ostly, County Clerk, again made demand upon the said Harold J. Ostly to pay over to the Sheriff out of funds in the possession of the said Harold J. Ostly, as County Clerk, belonging to the Riverside Iron and Steel Corporation, a corporation, in the sum of \$5,478.24."

(2)

That said stipulation of fact was amended as follows:

"It Is Stipulated by and between the attorneys for the plaintiff and the defendant in the above-en-



titled cause that the 'Stipulation of Fact,' dated April 13, 1954, shall be amended, as follows:

"I.

"That paragraph XI of the 'Stipulation of Fact' shall be amended to read as follows, beginning after the semicolon on line 21 of page 5:

"That thereafter on the 5th day of July, 1949, the [61] County Clerk made return to said writ reporting as follows:

" 'That we have the sum of \$329,263.46 on deposit in the above action, which amount is to be distributed to various litigants, among whom the Riverside Iron and Steel Corporation is one, according to the Judgment entered 7-30-48, upon said Judgment becoming final.'

"That the Sheriff returned said Writ of Execution on August 25, 1949, reporting as follows:

" 'I, E. W. Biscailuz, Sheriff of the County of Los Angeles, State of California, do hereby certify that I returned the annexed Writ of Execution wholly unsatisfied, with further costs of \$1.75.

" 'E. W. BISCAILUZ,  
" 'By F. E. MOONEY.'

"That thereafter on the 21st day of November, 1950, a second Writ of Execution was served on the County Clerk, and the County Clerk replied on December 1, 1950, as follows:

" 'That we have the sum of \$82,219.08 on deposit, which amount is being held subject to further order of court.'

“It is understood that this Stipulation is not intended as admission of the truth of the conclusions or statements made by the Clerk or Sheriff hereinabove quoted.

“II.

“That a new paragraph, to be numbered paragraph XVII, shall be deemed added to the ‘Stipulation of Fact’ at the end of paragraph XVI, as follows:

“That the judgment in said action of E. T. Foley vs. Riverside Iron and Steel Corporation, et al., No. 520858, in the Superior Court of the State of California, in and for the [62] County of Los Angeles, was signed and filed on July 28, 1948, and entered in Judgment Book 1945, page 210 on July 30, 1948. That said Judgment was amended on September 24, 1948, and entered on October 6, 1948, in Judgment Book 1967, page 163. That thereafter, said Riverside Iron and Steel Corporation and Harlan H. Bradt appealed from said judgment. That said judgment was affirmed by the District Court of Appeal of the State of California; that a petition for hearing in the Supreme Court was denied and a remittitur filed in the Superior Court of Los Angeles County on November 20, 1950.

“Matters Reserved for Future Determination

“The question of whether or not Riverside Iron and Steel Corporation was insolvent on the date it filed its voluntary petition in bankruptcy, in the event that it is necessary, will be submitted to the Court on oral testimony.

“The question of whether or not the defendant or his agents acting with reference thereto had knowledge or reasonable cause to believe that said Riverside Iron and Steel Corporation was insolvent will likewise be submitted on oral testimony, in the event that it is necessary for the court to make a decision.

“Dated this 13th day of April, 1954.

“THOMAS A. WOOD,

“Attorney for Defendant.

“LOUIS M. BROWN,

“ALEX DENNY FRED,

“By ALEX D. FRED,

“Attorneys for Plaintiff.” [63]

EXHIBIT “A”

In the Superior Court of the State of California,  
in and for the County of Los Angeles  
No. 522523

THOMAS A. WOOD,

Plaintiff,

vs.

THE RIVERSIDE IRON & STEEL CORPORATION,  
a Corporation,

Defendant.

SUPPLEMENTAL ANSWER TO  
GARNISHMENT

To notice of garnishment and attachment and demand for a statement served on me, on December

13, 1946, by the Sheriff of Los Angeles County, under and by virtue of a writ of attachment issued in the above-entitled action, and supplementing my answer of December 16, 1946, please be advised that in that certain action in the above-entitled court, entitled E. T. Foley, plaintiff, vs. Riverside Iron and Steel Corporation, et al., defendants, No. 520858, judgment was duly and regularly entered on Friday, July 30, 1948, in Book 1945, page 210 of Judgments. That under the terms of said judgment, E. T. Foley, the plaintiff in said action, was directed, within ten days after the entry thereof, to deposit with the Clerk of this Court the sum of \$329,263.46 for disbursement as in the judgment provided, and also to deposit with said Clerk certificates of the capital stock of Riverside Iron and Steel Corporation in the amount of 1,000 shares, with executed assignments releasing all right, title and interest of E. T. Foley in such stock to Harlan H. Bradt or his nominee. That of said sum of \$329,263.46, the judgment declares that Riverside Iron and Steel Corporation and Harlan H. Bradt are entitled to the [64] sum of \$82,619.69, less deductions for costs, and directs the Clerk of the Court, when said judgment shall have become final in the Court in which said cause shall be finally decided, to distribute and pay to Riverside Iron and Steel Corporation and Harlan H. Bradt the sum of \$82,619.69, less deductions for costs, and said 1,000 shares of stock and executed assignments thereof. That said E. T. Foley, in compliance with said judgment, deposited with the Clerk of said Court said sum of \$329,263.46 and said 1,000 shares of the capital stock of Riverside Iron

and Steel Corporation, with executed assignments releasing all his right, title and interest therein to Harlan H. Bradt.

That said judgment directs said Clerk to distribute the remainder of said sum of \$329,263.46 in the several amounts therein specified to several parties therein named, other than said Harlan H. Bradt.

August 4, 1948.

E. T. FOLEY, by  
COSGROVE, CLAYTON,  
CRAMER & DIETHER,

By T. B. COSGROVE,  
His Attorneys. [65]

EXHIBIT "B"

In the Superior Court of the State of California,  
in and for the County of Los Angeles  
No. 520858

E. T. FOLEY,

Plaintiff,

vs.

RIVERSIDE IRON AND STEEL CORPORA-  
TION, HARLAN H. BRADT, et al.,

Defendants.

STIPULATION

It Is Stipulated by and between plaintiff, E. T. Foley, and defendants, Riverside Iron and Steel



Corporation and Harlan H. Bradt, and their respective counsel of record, as follows:

1. Subsequent to the filing of the complaint herein there were duly served upon plaintiff, E. T. Foley, by the Sheriff of Los Angeles County, California, four (4) certain writs of attachments, attaching all moneys, goods, credits, effects, debts, due or owing, or any personal property in plaintiff's possession or under plaintiff's control, belonging to defendants, Riverside Iron and Steel Corporation and/or Harlan H. Bradt, as follows:

(a) Los Angeles Superior Court case No. 524582, entitled "United States Pipe and Foundry Company, plaintiff, v. Harlan H. Bradt, defendant," in the sum of Ten Thousand One Hundred Forty-eight and 25/100 Dollars (\$10,148.25), besides interest at the rate of 7% per annum from the 21st day of December, 1946, and costs of suit. A true and correct copy of said [66] writ is attached hereto, marked Exhibit A, and by this reference made a part hereof;

(b) Los Angeles Superior Court case No. 522523, entitled "Thomas A. Wood, plaintiff, v. The Riverside Iron & Steel Corporation, a corporation, defendant," in the amount of Four Thousand Twelve and 90/100 Dollars (\$4,012.90), besides interest at the rate of 7% per annum, from the 27th day of June, 1944, and costs of suit. A true and correct copy of said writ is attached hereto, marked



Exhibit B, and by this reference made a part hereof;

(c) Los Angeles Municipal Court case No. 819365, entitled "Mary I. Fraser, Executrix of the Estate of James S. Fraser, plaintiff, v. Riverside Iron & Steel Corporation, (a corporation), and Harlan H. Bradt, defendant," in the amount of Two Thousand Dollars (\$2,000.00), with interest at 4% per annum from June 29, 1941, and costs of suit. A true and correct copy of said writ is attached hereto, marked Exhibit C, and by this reference made a part hereof;

(d) Los Angeles Superior Court case No. 532598, entitled "E. L. Brumley, plaintiff, v. Harlan H. Bradt, defendant," in the amount of Twenty-five Hundred Dollars (\$2,500.00), with interest at the rate of 6% per annum from January 2, 1941, and costs of suit. A true and correct copy of said writ is attached hereto, marked Exhibit D, and by this reference made a part hereof.

2. To each of said writs so served, plaintiff E. T. Foley, [67] delivered to the Sheriff of Los Angeles County, California, as required by law, a statement in writing. True copies of said statements are attached hereto, marked Exhibits E-1, to E-4, inclusive, and by this reference made a part hereof.

3. Nothing herein contained shall be construed to be an admission by defendants, Riverside Iron and Steel Corporation or Harlan H. Bradt, that

there is due or owing anything to anyone under the cases or attachments above referred to.

/s/ E. T. FOLEY.

/s/ HARLAN H. BRADT.

RIVERSIDE IRON AND  
STEEL CORPORATION,

By HARLAN H. BRADT.

COSGROVE, CLAYTON,  
CRAMER & DIETHER,

T. B. COSGROVE,  
SAMUEL H. RINDGE,

By /s/ T. B. COSGROVE,  
Attorneys for E. T. Foley.

HAMMACK & HAMMACK,  
KENNETH McEWEN,

By DAN S. HAMMACK, JR.,  
Attorneys for Riverside Iron and Steel Corporation  
and Harlan H. Bradt.

GUTHRIE, DARLING &  
SHATTUCK, By

HUGH W. DARLING,  
Attorneys for West & Long,  
Hewitt S. West.

It Is So Ordered:

.....,  
Judge. [68]

EXHIBIT "C"

In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 520858

E. T. FOLEY,

Plaintiff,

vs.

RIVERSIDE IRON AND STEEL CORPORA-  
TION, a Corporation, HARLAN H. BRADT,  
et al.,

Defendants.

ORDER TO SHOW CAUSE

Upon the reading and filing of the affidavit of  
Thomas A. Wood, and good cause appearing there-  
for,

It is Ordered that Harold J. Ostly, County Clerk  
and Clerk of the Superior Court of the State of  
California, in and for the County of Los Angeles,  
and LeRoy B. Lorenz, the assignee of the judgment  
in favor of Riverside Iron and Steel Corporation,  
and Harlan H. Bradt, in the above-entitled cause,  
show cause before me in Department 34 of the  
Superior Court of the State of California, in and  
for the County of Los Angeles, on the 8th day of  
December, 1950, at 9:30 o'clock a.m. of that day,  
or as soon thereafter as counsel can be heard, why  
an order should not be made in the above-entitled  
action directing Harold J. Ostly, County Clerk and

Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, to pay to the Sheriff of the County [69] of Los Angeles, in satisfaction of the judgment entered in that certain action styled "Thomas A. Wood vs. Riverside Iron and Steel Corporation, a corporation, and numbered 522523, out of funds now on deposit with said Clerk in the above-entitled Action, for the use and benefit of Riverside Iron and Steel Corporation and Harlan H. Bradt, the sum of \$4,012.98, with interest at the rate of 7% per annum from the 27th day of June, 1944, plus \$18.00 costs, in satisfaction of the above judgment and pursuant to the writs of attachment and executions heretofore issued and served in said action of Wood vs. Riverside Iron and Steel Corporation, a corporation.

"It is further Ordered that a copy of the affidavit of Thomas A. Wood and a copy of this order be served upon Harold J. Ostly, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, and LeRoy B. Lorenz, at least five (5) days before the time fixed herein for showing cause.

"Dated this 1st day of December, 1950.

"W. TURNEY FOX,

"Judge of the Superior

"Court."

(3)

The court finds that there was not a transfer of funds within the meaning of the terms of the Bankruptcy Act within four months prior to bankruptcy.

(4)

The Court finds that it is true that the Superior Court of the State of California, in and for the County of Los Angeles, in the case of *E. T. Foley vs. Riverside Iron and Steel Corporation and Harlan H. Bradt*, ordered paid into court the sum of \$329,000.00; that said court specifically provided, however, that said fund was [70] not to be held in custodia legis and that the Clerk was to pay out said fund to the persons entitled thereto upon final judgment in the action.

(5)

That it is true that on April 8, 1949, judgment was entered in favor of Thomas A. Wood against Riverside Iron and Steel Corporation as prayed for in the complaint in said action; that it is true that thereafter and on the 28th day of June, 1949, a writ of execution issued out of the Superior Court of the State of California, directed to the Sheriff, to be served upon the County Clerk; that it is true that at the time of the issuance of said writ on the 28th day of June, 1949, the judgment in *Foley vs. Riverside Iron and Steel Corporation and Bradt* had not yet become final and that therefore said judgment and said fund in the hands of the Clerk was not subject to a writ of execution under Section 688 of the Code of Civil Procedure of the State of California, and no effort was made to impress a lien upon said judgment or said fund pursuant to Section 688.1 of the Code of Civil Procedure of the State of California.

(6)

That the Superior Court of the State of California, in and for the County of Los Angeles, properly ordered the Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, to pay over to Thomas A. Wood the sum of \$5,800.07 and that said money was not received by the defendant Thomas A. Wood by reason of any attachment or lien which the said Thomas A. Wood acquired within four months prior to bankruptcy of Riverside Iron and Steel Corporation; that said money was received by the said Thomas A. Wood pursuant to garnishment served on E. T. Foley on December 5, 1946, and pursuant to garnishment served upon the Clerk of the Superior Court of the State of California on the 12th day of August, 1948, and pursuant to writ of execution served upon [71] the Clerk of the Superior Court of the State of California on the 21st day of November, 1950.

### Conclusions of Law

From the foregoing findings of fact, the court makes its conclusions of law as follows:

#### I.

That the defendant Thomas A. Wood, on the 5th day of December, 1946, served on E. T. Foley a valid writ of attachment.

#### II.

That the said E. T. Foley, pursuant to stipulation and order of court, deposited the moneys with the



County Clerk of the Superior Court of the State of California, subject to the lien of the writ of attachment issued on the 5th day of December, 1946.

### III.

That the defendant Thomas A. Wood, on the 12th day of August, 1948, caused to be served on the Clerk of the Superior Court of the State of California a valid writ of attachment.

### IV.

That under the law of the State of California, the judgment and the funds in the possession of the Clerk, pursuant to order of court, were not subject to execution and levy under writ of execution until the judgment became final; that the writ of execution issued on the 28th day of June, 1949, did not create a lien upon either the judgment or the funds in the hands of the Clerk of the Superior Court of the State of California.

### V.

That a lien was created on said funds in the hands of E. T. Foley by virtue of the writ of attachment served on the 5th day of December, 1946, and said fund was transferred to and deposited with the Clerk of the Superior Court of the State of [72] California, subject to said lien.

### VI.

That the writ of attachment issued on the 12th day of August, 1948, and served upon the Clerk of the Superior Court of the State of California created a valid lien on said fund subject to the final determination in the action.

## VII.

That the present action by Lewis H. Saper, as trustee, against defendant Thomas A. Wood is a collateral attack upon a final order made by the Superior Court of the State of California, in and for the County of Los Angeles, in the case of *Foley vs. Riverside Iron and Steel Corporation* directing the County Clerk to pay the sum of \$5,478.20 to the Sheriff of the County of Los Angeles in satisfaction of the writ of execution issued on November 21, 1950.

## VIII.

That the funds as deposited, pursuant to order of court, with the Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, were not placed in custodia legis by virtue of the order of the Superior Court of the State of California, in and for the County of Los Angeles.

## IX.

That the defendant Thomas A. Wood is entitled to a judgment in his favor.

## X.

That the complaint be dismissed.

Dated this 23rd day of January, 1956.

/s/ JAMES M. CARTER,  
Judge.

Findings Reimbursed by Courts

/s/ J. M. C.

Lodged January 16, 1956.

[Endorsed]: Filed January 23, 1956. [73]

In the United States District Court, Southern District of California, Central Division

No. 15259—C

LEWIS H. SAPER, as Trustee, etc.,

Plaintiff,

vs.

THOMAS A. WOOD,

Defendant.

### JUDGMENT

The above-entitled cause came on for trial and hearing before the Honorable James M. Carter judge presiding, without a jury, the plaintiff being represented by Louis M. Brown and Alexander Denny Fred and the defendant appearing in pro persona. The cause being submitted upon a written statement of fact, the court having considered said written statment of fact and thereafter having made its findings of fact and conclusions of law pursuant thereto, enters judgment as follows:

It is Hereby Ordered, Adjudged and Decreed:

1. That the plaintiff take nothing by reason of his complaint;
2. That said complaint be dismissed;
3. That the defendant have and recover his costs herein expended in the sum of \$. . . . .

Dated this 23rd day of January, 1956.

/s/ JAMES M. CARTER,  
Judge.

Affidavit of Service by Mail attached.

Lodged January 16, 1956.

[Endorsed]: Filed January 23, 1956.

Docketed and entered January 24, 1956. [75]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is Hereby Given that Lewis H. Saper, as Trustee in Bankruptcy of Riverside Iron & Steel Corporation, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the final judgment entered in this action on January 24, 1956.

Dated: February 17, 1956.

ALEX D. FRED and  
LOUIS M. BROWN.

By /s/ ALEX D. FRED,  
Attorneys for Plaintiff-  
Appellant.

[Endorsed]: Filed February 23, 1956. [77]

[Title of District Court and Cause.]

STATEMENT OF POINTS PURSUANT TO  
RULE 75(d) FRCP

The points upon which appellant intends to rely are as follows:

(1) The court erred in holding and finding that the writ of attachment served on E. T. Foley on December 5, 1946, remained a valid writ of attachment three years after said date, and that said writ created a lien upon the funds held by Foley, and that said funds were transferred to the Clerk of the Superior Court of the State of California subject to said lien.

(2) The court erred in holding and finding that the respondent did not receive a transfer of funds within four months prior to bankruptcy.

(3) The court erred in holding and finding that the trial [81] court in the case of E. T. Foley v. Riverside Iron & Steel Corporation specifically provided that said funds were not to be held in custodia legis.

(4) The court erred in holding and finding that the respondent received any moneys pursuant to any garnishment or writ of execution issued or served prior to November 21, 1950.

(5) The court erred in holding and finding that the instant action constituted a collateral attack upon the order directing the County Clerk to pay

\$5,478.20 to the Sheriff of the County of Los Angeles in addition to the writ of execution issued on November 21, 1950.

(6) The court erred in concluding that the respondent caused to be served on August 12, 1948, on the Superior Court of the State of California, a valid writ of attachment, and that such writ created a valid lien on such funds held by the County Clerk subject to final determination in the action of *E. T. Foley v. Riverside Iron and Steel Corporation*.

(7) The court erred in concluding that the funds deposited pursuant to order of court with the Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, were not placed in custodia legis by virtue of the order of said court.

(8) The court erred in holding, finding, and awarding judgment to respondent Thomas A. Wood.

Dated: March 15, 1956.

ALEX D. FRED, and

LOUIS M. BROWN,

By /s/ ALEX D. FRED,

Attorneys for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 16, 1956. [82]



[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 83, inclusive, contain the original

Claim;

Answer;

Stipulation of Fact;

Amendment to Stipulation of Fact;

Memorandum of Decision;

Motion for New Trial, etc.;

Findings of Fact & Conclusions of Law;

Judgment;

Notice of Appeal;

Designation of Contents of Record on Appeal;

Statement of Points Pursuant to Rule 75(d)

FRCP;

Additional Designation of Contents of Record  
on Appeal;

which, together with a full, true and correct copy of the Minutes of the Court had on December 19, 1955, all in the above-entitled cause, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above case.

I further certify that my fees for preparing the foregoing record amount to \$2.00, which sum has been paid by appellant.

Witness my hand and the seal of the said District Court this 3rd day of April, 1956.

[Seal]

JOHN A. CHILDRESS,

Clerk;

By /s/ CHARLES E. JONES,  
Deputy.

[Endorsed]: No. 15086. United States Court of Appeals for the Ninth Circuit. Lewis H. Saper, as Trustee in Bankruptcy of Riverside Iron & Steel Corporation, Appellant, vs. Thomas A. Wood, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed April 4, 1956.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals  
for the Ninth Circuit  
No. 15086

LEWIS H. SAPER, as Trustee in Bankruptcy of  
RIVERSIDE IRON & STEEL CORPORA-  
TION,

Appellant,

vs.

THOMAS A. WOOD,

Respondent.

DESIGNATION OF RECORD AND STATE-  
MENT OF POINTS ON APPEAL (Rule 17)

Comes now the appellant, Lewis H. Saper, and adopts the Statement of Points and Designation of Contents of Record on Appeal and Additional Designation of Record on Appeal heretofore filed in the United States District Court for the Southern District of California, Central Division, as the Designation of Record and Statement of Points on which he intends to rely in this appeal.

Dated: April 9, 1956.

ALEX D. FRED, and

LOUIS M. BROWN,

By /s/ ALEX D. FRED,

Attorneys for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 11, 1956.

